

PART 2200—ACCESS TO LOCAL TELEVISION SIGNALS GUARANTEED LOAN PROGRAM; GENERAL POLICIES AND PROCEDURES

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AUTHORITY: 47 U.S.C. 1101 *et seq.*; Pub. L. 106-553; Pub. L. 107-171.

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§ 2200.1 Definitions.

(a) *Act* means the Launching Our Communities' Access to Local Television Act of 2000, Title X of Public Law 106-553, 114 Stat. 2762A-128.

(b) *Administrator* means the Administrator of the Rural Utilities Service of the United States Department of Agriculture.

(c) *Board* means the Launching Our Communities' Access to Local (LOCAL) Television Loan Guarantee Board.

(d) *Person* means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company or partnership, trust, unincorporated organization, government entity, agency or instrumentality or any subdivision thereof.

[67 FR 76105, Dec. 11, 2002, as amended at 68 FR 74416, Dec. 23, 2003]

§ 2200.2 Purpose and scope.

This part is issued by the Board pursuant to Section 1004 of the Act. This part describes the Board's organizational structure and the means and rules by which the Board takes actions.

§ 2200.3 Composition of the Board.

The Board consists of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Re-

serve System, the Secretary of Agriculture, and the Secretary of Commerce, or their respective designees. An individual may be designated a member of the Board only if the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate.

§ 2200.4 Authority of the Board.

The Board is authorized to guarantee loans in accordance with the provisions of the Act and procedures, rules, and regulations established by the Board; to make the determinations authorized by the Act; and to take such other actions as are necessary to carry out its functions in accordance with the Act.

§ 2200.5 Offices.

The principal offices of the Board are at the U.S. Department of Agriculture, Rural Utilities Service, Room 2919-S, Stop 1541; 1400 Independence Ave., SW.; Washington, DC 20256-1590.

§ 2200.6 Meetings and actions of the Board.

(a) *Chair*. At its initial meeting, the Board shall select a Chair by an affirmative vote of not less than three members of the Board.

(b) *Place and frequency*. The Board meets, on the call of the Chair, in order to consider matters requiring action by the Board. Time and place for any such meeting shall be determined by the members of the Board.

(c) *Quorum and voting*. Three voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by an affirmative vote of not less than three members of the Board. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(d) *Agenda of meetings*. To the extent practicable, an agenda for each meeting shall be distributed to members of the Board at least two days in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

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(e) *Minutes.* The Secretary shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(f) *Use of conference call communications equipment.* Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(g) *Actions between meetings.* When, in the judgment of the Chair, circumstances occur making it desirable for the Board to consider action when it is not feasible to call a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary and the voting members may communicate their votes to the Chair in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes.

(h) *Officers and staff of the Board.* The Board shall appoint a Secretary and may appoint such other officers and staff as it deems appropriate, including an Executive Director and a Legal Counsel. An individual may hold more than one officer or staff position.

(i) *Delegations of authority.* The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to officers and staff to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a

meeting or otherwise. Any action taken pursuant to such delegated authority has the effect of an action taken by the Board.

§ 2200.7 Officer and staff responsibilities.

(a) *Executive Director.* The Executive Director advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *Legal Counsel.* The Legal Counsel provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary.* The Secretary sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board, has authority to publish documents in the FEDERAL REGISTER upon approval of the Board and performs such other duties as the Board may require.

(d) *Other.* The responsibilities of any other officer or staff shall be defined by the Board at the time of appointment of such position.

§ 2200.8 Ex parte communications.

Communication with the Board shall be conducted through the staff of the Board. Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited.

§ 2200.9 Amendments.

The Board's rules may be adopted or amended, or new rules may be adopted, only by the affirmative vote of not less than three members of the Board. Authority to adopt or amend these rules may not be delegated.

§ 2200.10 Restrictions on lobbying.

(a) No funds received through a Loan guaranteed under this Program in this chapter may be expended by the recipient of a Federal contract, grant, loan,

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loan guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form-LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form-LLL), if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(e) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (c) of this section.

(f) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (d) or (e) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

[68 FR 74416, Dec. 23, 2003]

§ 2200.11 Government-wide debarment and suspension (nonprocurement).

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect. The Board shall review the List of Debarred entities prior to making final loan Guarantee decisions. Suspension or debarment may be a basis for denying a loan Guarantee.

(b) This section applies to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of this section such transactions will be referred to as “covered transactions.”

(1) *Covered transaction.* For purposes of this section, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (b)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction;

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$100,000) under a primary covered transaction;

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves

mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not accepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of this section would be prohibited by law.

(3) *Board covered transactions.* This section applies to the Board's Loan Guarantees, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type.

(c) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to paragraph (1) of this section.

(d) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see paragraph (b)(1)(ii) of this section for the period of their exclusion).

(e) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not accepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of this section would be prohibited by law.

(f) Persons who are ineligible are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(g) Persons who accept voluntary exclusions are excluded in accordance with the terms of their settlements. The Board shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(h) The Board may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with the Executive Order.

(i) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted under paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is:

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[68 FR 74416, Dec. 23, 2003]

§ 2200.12 Freedom of Information Act.

(a) *Definitions.* All terms used in this section, which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA*, as used in this section, means the “Freedom of Information Act,” as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a “commercial” basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. “Freelance” journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the general public.

(9) *Review* means the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* means the process of looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. Searches may be done manually or by computer.

(b) *Records available for public inspection and copying*—(1) *Types of records made available.* The information in this section is furnished for the guidance of the public and in compliance with the requirements of the FOIA. This section sets forth the procedures the Board follows to make publicly available the materials specified in 5 U.S.C. 552(a)(2). These materials shall be made available for inspection and copying at the Board’s offices pursuant to 5 U.S.C. 552(a)(2). Information routinely provided to the public as part of a regular Board activity (for example, press releases) may be provided to the public without following this section.

(2) *Reading room procedures.* Information available under this section is

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available for inspection and copying, from 9 a.m. to 5 p.m. weekdays, at 1400 Independence Avenue, SW., Washington, DC.

(3) *Electronic records.* Information available under this section shall also be available on the Board's Web site found at <http://www.usda.gov/rus/localtvboard>.

(c) *Records available to the public on request—(1) Types of records made available.* All records of the Board that are not available under paragraph (b) of this section shall be made available upon request, pursuant to the procedures in this section and the exceptions set forth in the FOIA.

(2) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board at LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919-S, Washington, DC 20250-1575, or sent by facsimile to the Secretary of the Board at (202) 720-2734. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST*.

(3) *Contents of request.* The request shall contain the following information:

(i) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(ii) Whether the requested information is intended for commercial use, or whether the requester represents an educational or noncommercial scientific institution, or news media;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies paragraph (f) of this section.

(d) *Processing requests—(1) Priority of responses.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency, is the date the Secretary of the Board actually re-

ceives the request. The Secretary of the Board shall normally process requests in the order they are received. However, in the Secretary of the Board's discretion, the Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (d)(2) of this section. When using multitrack processing, the Secretary of the Board may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. The Secretary of the Board shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(2) *Expedited processing.* (i) A person may request expedited access to records by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(ii) The Secretary of the Board shall notify a requester of the determination whether to grant or deny a request for expedited processing within ten working days of receipt of the request. If the Secretary of the Board grants the request for expedited processing, the Board shall process the request for access to information as soon as practicable. If the Secretary of the Board denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (e) of this section, and the Board shall respond to the appeal within twenty days after the appeal was received by the Board.

(3) *Time limits.* The time for response to requests shall be 20 working days, except:

(i) In the case of expedited treatment under paragraph (d)(2) of this section;

(ii) Where the running of such time is suspended for payment of fees pursuant to paragraph (f)(2)(ii) of this section;

(iii) Where the estimated charge is less than \$250, and the requester does

not guarantee payment pursuant to paragraph (f)(2)(i) of this section; or

(iv) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B)(iii), the time limit may be extended for a period of time not to exceed 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or such alternative time period as mutually agreed to by the Secretary of the Board and the requester when the Secretary of the Board notifies the requester that the request cannot be processed in the specified time limit.

(4) *Response to request.* In response to a request that satisfies paragraph (c) of this section, an appropriate search shall be conducted of records in the custody and control of the Board on the date of receipt of the request, and a review made of any responsive information located. The Secretary of the Board shall notify the requester of:

(i) The Secretary of the Board's determination of the request and the reasons therefore;

(ii) The information withheld, and the basis for withholding; and

(iii) The right to appeal any denial or partial denial, pursuant to paragraph (e) of this section.

(5) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, classified by, or is in the primary interest of another agency, the Secretary of the Board may refer the request to that agency for a direct response by that agency and inform the requester promptly of the referral. The Secretary of the Board shall consult with another Federal agency before responding to a requester if the Board receives a request for a record in which:

(i) Another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or

(ii) Another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(6) *Providing responsive records.* (i) A copy of records or portions of records responsive to the request shall be sent

to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Secretary of the Board deems it appropriate to send the documents by another means. The Secretary of the Board shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format, but the Secretary of the Board need not provide more than one copy of any record to a requester.

(ii) The Secretary of the Board shall provide any reasonably segregable portion of a record that is responsive to the request after deleting those portions that are exempt under the FOIA or this section.

(iii) Except where disclosure is expressly prohibited by statute, regulation, or order, the Secretary of the Board may authorize the release of records that are exempt from mandatory disclosure whenever the Board or designated Board members determine that there would be no foreseeable harm in such disclosure.

(iv) The Board is not required in response to the request to create records or otherwise to prepare new records.

(7) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board officers, employees, or agents properly entitled to such information for the performance of official duties), unless required by law.

(e) *Appeals.* (1) Any person denied access to Board records requested under paragraph (c) of this section, denied expedited processing under paragraph (d) of this section, or denied a waiver of fees under paragraph (f) of this section may file a written appeal within 30 calendar days after the date of such denial with the Board. The written appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to Chairman of the Board, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW.,

STOP 1575, Room 2919-S, Washington, DC 20250-1575, or sent by facsimile to (202) 720-2734. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the requested records should be made available and why the initial denial was in error.

(2) The Chairman of the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal, and the determination letter shall notify the appealing party of the right to seek judicial review in event of denial.

(f) *Fee schedules and waiver of fees*—(1) *Fee schedule.* The fees applicable to a request for records pursuant to paragraph (c) of this section are set forth in the uniform fee schedule at the end of this paragraph (f).

(i) *Search.* (A) Search fees shall be charged for all requests other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (f)(1)(iv) of this section. The Secretary of the Board shall charge for time spent searching even if no responsive record is located or if the Secretary of the Board withholds the record(s) located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(B) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (f)(3) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (f)(3)) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (f)(1)(iv) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be 15 cents per page. For copies produced by computer, such as tapes or printouts, the Secretary of the Board

shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the Secretary of the Board will charge the direct costs of that duplication.

(iii) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the Secretary of the Board determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(iv) *Limitations on charging fees.* (A) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(B) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(C) Whenever a total fee calculated under this paragraph is \$25 or less for any request, no fee will be charged.

(D) For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$25.

(2) *Payment procedures.* All persons requesting records pursuant to paragraph (c) of this section shall pay the applicable fees before the Secretary of the Board sends copies of the requested records, unless a fee waiver has been granted pursuant to paragraph (f)(6) of this section. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(i) *Advance notification of fees.* If the estimated charges are likely to exceed \$25, the Secretary of the Board shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high

as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary of the Board to reformulate the request to lower the costs. The processing of the request shall be suspended until the requester provides the Secretary of the Board with a written guarantee that payment will be made upon completion of the processing.

(ii) *Advance payment.* The Secretary of the Board shall require advance payment of any fee estimated to exceed \$250. The Secretary of the Board shall also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by \$1 or more, the difference shall be refunded to the requester. The time period for responding to requests under paragraph (d)(4) of this section, and the processing of the request shall be suspended until the Secretary of the Board receives the required payment.

(iii) *Late charges.* The Secretary of the Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717.

(3) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Secretary of the Board shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary of the Board may seek additional clarification before categorizing the request.

(i) *Commercial use requester.* The fees for search, duplication, and review apply when records are requested for commercial use.

(ii) *Educational, non-commercial scientific institutions, or representatives of the news media requesters.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or non-commercial scientific institution,

whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(iii) *All other requesters.* For all other requests, the fees for search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(4) *Nonproductive search.* Fees for search may be charged even if no responsive documents are found. Fees for search and review may be charged even if the request is denied.

(5) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary of the Board reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees or that several requesters appear to be acting together to submit multiple requests solely in order to avoid payment of fees, the Secretary of the Board may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary of the Board to presume that multiple requests by one requester on the same topic made within a 30-day period have been made to avoid fees.

(6) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in under paragraph (d)(4) of this section, shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(i) *Standards for determining waiver or reduction.* The Secretary of the Board may grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of

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the requester. In making this determination, the following factors shall be considered:

(A) Whether the subject of the records concerns the operations or activities of the government;

(B) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(C) Whether the requester has the intention and ability to disseminate the information to the public;

(D) Whether the information is already in the public domain;

(E) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(F) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(ii) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraph (f)(6)(i) of this section.

(iii) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(iv) *Determination by Secretary of the Board.* The Secretary of the Board shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with paragraph (e) of this section.

(7) Uniform fee schedule.

| Service | Rate |
|--|--|
| (i) Manual search | Actual salary rate of employee involved, plus 16 percent of salary rate. |
| (ii) Computerized search | Actual direct cost, including operator time. |
| (iii) Duplication of records: | |
| (A) Paper copy reproduction. | \$.15 per page. |
| (B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform). | Actual direct cost, including operator time. |

| Service | Rate |
|--|--|
| (iv) Review of records (includes employee preparation for release, i.e. excising). | Actual salary rate of conducting review, plus 16 percent of salary rate. |

(g) *Request for confidential treatment of business information—(1) Submission of request.* Any submitter of information to the Board who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Board at the time the information is submitted or a reasonable time after submission.

(2) *Form of request.* Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(3) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated “*PROPRIETARY*” or “*BUSINESS CONFIDENTIAL*” in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(h) *Request for access to confidential commercial or financial information—(1) Request for confidential commercial or financial information.* A request by a submitter for confidential treatment of any business information shall be considered in connection with a request for access to that information.

(2) *Notice to the submitter.* (i) The Secretary of the Board shall notify a submitter who requested confidential treatment of information pursuant to 5 U.S.C. 552(b)(4), of the request for access.

(ii) Absent a request for confidential treatment, the Secretary of the Board may notify a submitter of a request for

access to submitter's business information if the Secretary of the Board reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(iii) The notice given to the submitter by mail, return receipt requested, shall be given as soon as practicable after receipt of the request for access, and shall describe the request and provide the submitter seven working days from the date of notice, to submit written objections to disclosure of the information. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information which is considered to be commercial or financial information, and that the information is a trade secret, is privileged or confidential, or that its disclosure is likely to cause substantial competitive harm to the submitter. If the submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the release of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(3) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(i) The Secretary of the Board determines that the request for access should be denied;

(ii) The requested information lawfully has been made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary of the Board, except that in this last instance the Secretary of the Board shall give the submitter written notice of the determination to disclose the information at least seven working days prior to disclosure.

(4) *Notice to requester.* At the same time the Secretary of the Board notifies the submitter, the Secretary of the Board also shall notify the requester that the request is subject to the provisions of this section.

(5) *Determination by Secretary of the Board.* The Secretary of the Board's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary of the Board determines to disclose the business information over the objection of a submitter, the Secretary of the Board shall give the submitter written notice via mail, return receipt requested, or similar means, which shall include:

(i) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(6) *Notice of lawsuit.* The Secretary of the Board shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information, and shall promptly notify a requester of any suit filed against the Board to enjoin the disclosure of requested documents.

[68 FR 74416, Dec. 23, 2003]

PART 2201—LOCAL TELEVISION LOAN GUARANTEE PROGRAM— PROGRAM REGULATIONS

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